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NO. COA13-571  
NORTH CAROLINA COURT OF APPEALS

Filed: 17 December 2013

IN THE MATTER OF:

C.A.S.  
A Minor Child

Nash County  
No. 11 JT 161

Appeal by respondent-father from order entered 27 February 2013 by Judge John J. Covolo in Nash County District Court. Heard in the Court of Appeals 25 November 2013.

*No brief filed, for petitioner-appellee mother.*

*Staples S. Hughes, Appellate Defender, by J. Lee Gilliam, Assistant Appellate Defender, for respondent-appellant father.*

MARTIN, Chief Judge.

Respondent-father appeals from the trial court's order terminating his parental rights to C.A.S. ("Chris").<sup>1</sup> We reverse the trial court's order.

Father and petitioner-mother married in 2007 and divorced in 2010. Chris was the only child born of the marriage. On 14

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<sup>1</sup> A pseudonym is used to protect the juvenile's privacy.

December 2011, mother filed a petition to terminate father's parental rights alleging the following grounds: (1) abuse; (2) failure to pay child support; (3) dependency; (4) abandonment; and (5) that father kidnapped mother and Chris with the intention of killing them both.

The termination of parental rights hearing was conducted on 2 October 2012. At the hearing, the trial court found that father, while carrying a gun, kidnaped Chris and his mother and shot the gun out of the car window a few times. The trial court found that the evidence supported the ground of abuse and entered an order terminating father's parental rights. Father timely filed notice of appeal.

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While mother alleged several grounds for the termination of father's parental rights, the trial court terminated his parental rights based only on abuse. Father challenges the termination of his parental rights because he argues that the trial court erred in concluding the abuse of Chris was likely to reoccur. We agree.

"A termination proceeding is conducted in two stages: adjudication and disposition." *In re C.W.*, 182 N.C. App. 214, 218, 641 S.E.2d 725, 728 (2007). "[T]he petitioner has the

burden of proving at the adjudication stage that there is clear, cogent, and convincing evidence to support at least one of the statutory grounds for termination provided in Section 7B-1111 of the North Carolina General Statutes." *In re Greene*, 152 N.C. App. 410, 415, 568 S.E.2d 634, 637 (2002). We review the adjudicatory stage to determine "whether the trial court's findings of fact are based on clear, cogent, and convincing evidence and whether those findings support the trial court's conclusion that grounds for termination exist." *In re C.W.*, 182 N.C. App. at 219, 641 S.E.2d at 729.

A trial court may terminate parental rights based on findings that a parent has abused a juvenile. N.C. Gen. Stat. § 7B-1111(a)(1) (2011). "In part, an 'abused juvenile' is defined as '[a]ny juvenile less than 18 years of age whose parent . . . [c]reates or allows to be created a substantial risk of serious physical injury to the juvenile by other than accidental means.'" *In re Greene*, 152 N.C. App. at 416-17, 568 S.E.2d at 638 (alterations in original) (quoting N.C. Gen. Stat. § 7B-101(1)(b) (2001)).

When terminating parental rights due to abuse, the trial court must "consider all evidence of relevant circumstances or events which existed or occurred before the adjudication of

abuse, as well as any evidence of changed conditions in light of the evidence of prior abuse and the probability of a repetition of that abuse." *Id.* at 417, 568 S.E.2d at 638. "The determinative factors must be the best interests of the child and the fitness of the parent to care for the child *at the time of the termination proceeding.*" *In re Ballard*, 311 N.C. 708, 715, 319 S.E.2d 227, 232 (1984).

In this case, the evidence tended to show that before the adjudication of abuse, father broke into mother's home and kidnapped mother and Chris at gunpoint. Mother testified that father pointed the gun at Chris and fired the gun out of the car window "a few times" while Chris was present in the car. The trial court also found that father is currently and will be incarcerated for at least 15 years, which demonstrates a change in father's condition. Moreover, there is almost no probability of future abuse because father will be incarcerated for at least 15 years. Furthermore, mother testified that father has not had contact with Chris for two years and that Chris does not know who his father is. Therefore, we reverse the trial court's order because there is not enough evidence to support the trial court's conclusion that there is a probability of repetition of abuse.

Reversed.

Judges GEER and STROUD concur.

Report per Rule 30(e).